

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 4. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

#### PREAMBLE

- |   |  |
|---|--|
| <b><u>1. Sections Affected</u></b><br>R17-4-507 | <b><u>Rulemaking Action</u></b><br>Amend |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366  
Implementing statutes: A.R.S. §§ 28-3165 and 28-3166
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 7 A.A.R. 2085, May 18, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Bill Bishop Rules Analyst
Address:	Department of Transportation Administrative Rules Unit, Mail Drop 507M 3737 N. 7th Street, Suite 160 Phoenix, Arizona 85014-5017
Telephone:	(602) 712-8449
Fax:	(602) 241-1624
E-mail:	bjbishop@dot.state.az.us

To track the progress of this rule and any other agency rulemaking matters, please visit the ADOT web site at: [www.dot.state.az.us/about/rules](http://www.dot.state.az.us/about/rules).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
R17-4-507 is the rule giving the requirements for the identification number given on driver licenses. This rulemaking action arises from a five-year review report approved by the Governor's Regulatory Review Council on June 23, 2000 (F-00-0603). The Department is planning to update the rule's language for clarity and to ensure compliance with federal standards on the use of Social Security Numbers.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
None

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**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking will update the current rule for clarity, and this should decrease the cost of agency compliance. The rulemaking will also update the rule to make it comply with federal law regarding the use of Social Security Numbers. This should have the affect of increasing the public's privacy. The rulemaking will impose costs on state agencies for rule development and regulatory review. Overall, this rulemaking will probably have little economic, small business, and consumer impact.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Interested persons may contact the Rules Analyst listed in item #4 above regarding the economic, small business, and consumer impact statement.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No public hearing is planned for this rulemaking. Oral comments and oral requests for a public hearing may be made Monday through Friday, 8:00 a.m. to 5:00 p.m., at the phone number in item #4 above. Written comments may also be sent to address in item #4. All comments must be received by 4:30 p.m. on Friday, June 29, 2001, at which time the public record will close.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION**

**ARTICLE 5. DRIVER LICENSES**

Section

R17-4-507. ~~Driver's~~ Driver License Identification Number

**ARTICLE 5. DRIVER LICENSES**

**R17-4-507. ~~Driver's~~ Driver License Identification Number**

A. Definitions. The following words and phrases, when used in these rules, shall have the meanings respectively ascribed to them:

1. "Applicant" means any person applying for an operator's, chauffeur's or motorcycle license.

21. "Division" means the Motor Vehicle Division, Arizona Department of Transportation, ~~acting through its duly authorized officers and agents.~~

32. "~~Permanent unique identification~~ Identification number" means ~~the Social Security number issued by the U.S. Government or a number assigned by the Department.~~ a permanent, unique series of characters assigned by the Division to a person.

B. ~~No operator's, chauffeur's or motorcycle license, or any combination thereof, shall be issued without a permanent unique identification number as provided by this rule. The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit who does not already have an identification number. The Division shall place a person's identification number on a person's driver license, nonoperating identification, license or instruction permit.~~

C. ~~Every applicant, upon application for an operator's, chauffeur's or motorcycle license, or any combination thereof, shall be assigned a unique identification number which shall appear on that and all subsequent licenses issued by the Department, except as provided in subsection (D). The Division shall not use a person's Social Security Number as the person's identification numbers unless:~~

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1. The person's driver license or nonoperating identification license currently has a Social Security number as the identification number and
  2. The person requests that the person's Social Security number be used as an identification number.
- ~~D. Any person applying for a driver's license may provide proof of his or her Social Security number. Proof which will be considered will be, but not limited to, a pay stub (from which the person's earnings may be deleted or not divulged), a Social Security Identification Card, driver's license from another state, or a document from another government agency that contains the name and Social Security number of the applicant. If the applicant does not provide a Social Security number, a 9-character substitute number will be assigned by the Department. The Social Security number or the substitute number shall appear on the application as the permanent driver's license number.~~
- ~~E. If a person who has received a driver's license with a Department assigned substitute number subsequently obtains a valid Social Security number, the person may provide the Department proof of this number at the time of renewal and this number shall become the valid driver's license number.~~

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R18-2-301                          | Amend                           |
| R18-2-326                          | Amend                           |
| R18-2-511                          | Amend                           |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statutes: A.R.S. §§ 49-104(A)(11), 49-402, 49-422(A), 49-422(C), and 49-425
- Implementing statutes: A.R.S. §§ 49-426(E), 49-426(L), and 49-455
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 7 A.A.R. 2016, May 4, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Mark Lewandowski  |
| Address:   | 3033 North Central Avenue T5109B<br>Phoenix, Arizona 85012  |
| Telephone: | (602) 207-2230. If you are outside the (602) area code, dial 1-800-234-5677, and ask for the extension. |
| Fax:       | (602) 207-2366  |
| E-mail:    | msl@ev.state.az.us  |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- This rule revises the structure of the Arizona Department of Environmental Quality's (ADEQ's) air permit fees. The need for permit fee rules is based on Arizona's mandate to comply with state law and the federal Clean Air Act. The ADEQ is required to develop and implement a permit program in which fees paid by sources will support program development and implementation costs. Though it was sufficient then, the last permit fee revision adopted in 1993 cannot adequately address all current air permitting program requirements. The program fee requirement is statutorily mandated by A.R.S. § 49-426(E)(1) and (E)(2). Furthermore, A.R.S. § 49-426(E)(2) requires the ADEQ Director to establish a fee system that is "consistent with and equivalent to that prescribed by section 502 of the clean air act." Arizona law, being consistent with the 1990 Clean Air Act Amendments (CAAA), also provides for increasing permit fees based on the consumer price index. The proposed rules, a revision of R18-2-301, and new rule text for R18-2-326 and R18-2-511, conform to these mandates.

The challenge was to develop a fee schedule that would recover ADEQ's costs, allow the counties to collect sufficient revenues, and allocate permit program costs among sources in a manner that would be equitable and acceptable. Maricopa, Pima, and Pinal counties administer their own air quality programs. A.R.S. § 49-112(B) limits the amount these counties may charge for their permit fees to an amount "approximately equal or less than" the fee the state program may charge. "Approximately equal" is defined in A.R.S. § 49-101 as "not greater than ten percent more than the fees or costs charged by the state for similar state permits or approvals." To ensure that all counties and ADEQ would recover adequate revenue, taking into account the differences between the state and county programs, linear program modeling was employed using the Microsoft Excel<sup>®</sup> Solver Tool, projected figures contained in ADEQ's Work Load Analysis (WLA), and estimates provided by the individual counties. Additionally, cost allocation calculations had to ensure that fees from Title V permits were used solely for Title V program costs.

Title V of the CAAA provides for a permit system implemented by states, and requires that states recover costs incurred to develop and administer the operating permit program and include the following:

- Preparing rules and implementing procedures for the permit program, including enforcement provisions.
- Reviewing and acting upon permit applications, including permit revisions, renewals, etc.
- Administering and operating the program (e.g., all activities pertaining to issuing permits, supporting and tracking permitted sources; compliance certifications; and related data entry).
- Implementing and enforcing permit terms, excluding court costs or other costs associated with enforcement actions.
- Performing emissions and ambient monitoring.
- Performing modeling, analyses, and demonstrations.
- Preparing inventories and tracking emissions.
- Developing and administering a Small Business Assistance Program (SBAP), pursuant to CAAA 502(b)(3)(7)(A)(i) through (vi).

A final objective met by this rule is to assure that the state's Title V permit fee program is EPA-approvable, thus avoiding a federally-administered program in this state.

For purposes of fees, the designations "Title V" and "Non-Title V" generally refer to the origin of the source's permit requirement. For a source that requires a permit pursuant to State law and Title V of the federal CAAA, the proposed fee structure includes an hourly-based permit processing fee. The source must also pay an annual fixed fee plus an annual emissions-based fee. For a source that requires a permit pursuant only to State law (non-title V), the proposed fee structure is based on an hourly-based permit processing fee not to exceed \$25,000 and a fixed annual fee. For a source that is covered under a general permit, the proposed fee structure is based on fixed amounts for obtaining an authorization to operate and an annual fee. These structures are visualized more clearly in the tables below in the Section-by-Section Analysis.

One reason for the proposed structure is that Title V sources have expressed an interest in moving away from the existing fee structure, under which emissions-based fees provide over three-quarters of the total annual revenue. Such a structure did not provide for budgeting consistency from year to year because emissions are, in part, determined by a source's operational demands, which may vary greatly from year to year. The proposed structure will allow sources to better anticipate their costs since only a small portion of the annual fees are based on emissions tonnage. The emissions tonnage will be billed at \$11.75/ton, which is revised annually based on the Consumer Price Index. The annual fees, also adjusted annually, were calculated based on actual hours that will be expended on each source category for activities that cover inspections, monitoring, and other regulatory activities.

#### **SECTION-BY-SECTION ANALYSIS**

##### **R18-2-301. Definitions.**

This Section adds terms used within this rulemaking. The terms "billable permit action" and "permit processing time" are used in this rulemaking to clarify for what types of activities the sources pay a fee. "Itemized bill" refers to the information the Department will include on the invoice.

The "North American Industry Classification System-United States (NAICS)" refers to the series of number codes and attempts to classify all business establishments by the types of products or services they make available. The 6-digit NAICS code replaces the 4-digit SIC code. The longer code accommodates a larger number of sectors and allows more flexibility in designating subsectors. Establishments engaged in the same activity, whatever their size or

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type of ownership, are assigned the same code. Use of these codes and definitions are important for standardization, however, since it was not possible to provide a NAICS code for every potential source, the proposed rule itself does not stipulate any NAICS codes.

**R18-2-326. Fees Related to Individual Permits.**

This Section describes the categories of sources and outlines the fees each category must pay. Subsection (B) details the hourly rate, and includes a cap for hourly fees. The Section specifies when in the permitting process an invoice will be sent. The \$66 hourly rate has been calculated by taking the total costs for processing the projected number of permit applications and dividing by the number of technical hours required to process those applications. The growth in the hourly rate is the result of anticipated increased expenses for operating the permitting programs, including growth in base salaries and increased expenses for the public notice and comment process.

Subsection (C) details fees for Class I Title V sources. The tables included in the rule list the annual fixed fee, and (C)(2) details emission fees, also charged annually. Emission fees are based on stack and some fugitive emissions. The rule proposes a method for determining which fugitives count for emission fees which was based on stakeholder input: no PM<sub>10</sub> fugitives count unless they are in the 4 listed categories; all VOC fugitives count unless they are from a solution-extraction unit. To comply with A.R.S. § 49-426(E)(1), the Fixed Fees would be adjusted annually for both Class I and Class II Title V sources. For consistency, ADEQ also proposes to adjust the Fixed Fees for Class II Non-Title V sources.

The following table illustrates what fees a Class I facility would pay under the proposed rule.

**CLASS I -TITLE V PERMIT FEES**

Permit Action	Type of Fee	Fee	Payment Time
<b>New Facility</b>	Permit Processing	\$66/ hour, no cap	Prior to permit issuance
	Annual Fees	Fixed Fee + \$11.75/ton, max 4000 tons per pollutant, excluding certain fugitive emissions <sup>1</sup> , no emissions already counted as VOC or PM <sub>10</sub> , CO exempted	After initial start-up, every March 31, starting 2002
<b>Existing Facility</b>	Permit Processing (Renewals)	\$66/ hour, no cap	Prior to permit issuance
	Annual Fees	Fixed Fee + \$11.75/ton, max 4000 tons per pollutant, excluding certain fugitive emissions <sup>1</sup> , no emissions already counted as VOC or PM <sub>10</sub> , CO exempted	Every March 31, starting 2002
<b>Permit Revisions</b>	Permit Processing	\$66/ hour, no cap	Prior to issuance
<b>Administrative Amendments, Changes per R18-2-317, Transfers</b>	NO FEE		
<b>General Permit</b>	Permit Processing	\$500	Application Fee
	Annual Fee	Fixed fee	March 31, starting March 2002

<sup>1</sup> See R18-2-326(C)(2)(c)(iv) & (v).

Subsections (D) and (E) detail fees for Class II Title V and Non-Title V permits respectively. The following tables illustrate what fees Class II facilities will be responsible to pay.

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**CLASS II TITLE V PERMIT FEES**

Permit Action	Type of Fee	Fee	Payment Time
<b>New Facility</b>	Permit Processing	\$66/ hour, no cap	Prior to permit issuance
	Annual Fees	Fixed Fee	After initial start-up, every March 31, starting 2002
<b>Existing Facility</b>	Permit Processing (Renewals)	\$66/ hour, no cap	Prior to permit issuance
	Annual Fees	Fixed Fee	After initial start-up, every March 31, starting 2002
<b>Permit Revisions</b>	Permit Processing	\$66/ hour, no cap	Prior to issuance
<b>Administrative Amendments, Changes per R18-2-317, Transfers</b>	NO FEE		
<b>General Permit</b>	Permit Processing	\$500	At the time of application submittal
	Annual Fee	Listed source categories pay \$500, others pay \$3000	March 31, starting 2002

**CLASS II NON-TITLE V PERMIT FEES**

Permit Action	Type of Fee	Fee	Payment Time
<b>New Facility</b>	Permit Processing	\$66/ hour, maximum \$25,000	Prior to permit issuance
	Annual Fees	Fixed Fee	After initial start-up, every March 31, starting 2002
<b>Existing Facility</b>	Permit Processing (Renewals)	\$66/ hour, maximum \$25,000	Prior to permit issuance
	Annual Fees	Fixed Fee	After initial start-up, every March 31, starting 2002
<b>Permit Revisions</b>	Permit Processing	\$66/ hour, maximum \$25,000	Prior to issuance
<b>Administrative Amendments, Changes per R18-2-317, Transfers</b>	NO FEE		
<b>General Permit</b>	Permit Processing	\$500	At the time of application submittal
	Annual Fee	Listed source categories pay as listed in rule, others pay \$2,000	March 31, starting 2002

Subsections (F), (G), and (H) codify the invoicing processes, including due dates for invoicing and payment, an informal review process for disputed charges, and provisions for incremental increases in the fees as the Consumer Price Index changes. A fee provision for sources temporarily not operating but wanting to maintain their permit is found in subsection (J). An accelerated permit processing provision is included in subsection (I) and detailed below.

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**ACCELERATED PERMIT FEES**

Permit type	Application Fee	Maximum Fee	Fee rate
Class I	\$15,000	No cap	Actual cost
Class II Title V	\$15,000	No cap	Actual cost
Class II Non-Title V	\$15,000	\$25,000	Actual cost

Provisions in subsection (K) have been included for the transition from the current fee schedule, to the proposed fee schedule. ADEQ intends to make this rule effective January 2, 2002, even if the rule is actually filed with the Secretary of State before January 2, 2002. See A.R.S. § 41-1032.

**R18-2-511. Fees Related to General Permits.**

The provisions in this Section have reduced the general permit application fee from \$540 to \$500, and removed inspection fees to be replaced with an annual fixed fee for all general permits.

**7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

“Draft Arizona’s Workload and Resource Needs Analysis for Assessing Permitting Fees,” January 26, 2000.

This document is available at:

Arizona Department of Environmental Quality Library  
3033 North Central Avenue, Suite 100  
Phoenix, Arizona 85012  
(602) 207-4335

**8. The preliminary summary of the economic, small business, and consumer impact:**

This economic impact statement (EIS) was developed to estimate the incremental impact of this rule. This impact, comprised of potential costs and benefits, represents the probable “incremental” impact or the estimated costs and benefits above what currently is the status quo. Thus, it is not the total accumulation of costs and benefits, but the marginal costs and benefits possible under a new status quo once this rule is implemented.

Currently, about 75% of the revenues that support the point source permitting program come from annual Title V emissions fees; under the new rule, this proportion would be significantly less. Although the proposed increase in the hourly rate charged for permit processing would result in higher costs to applicants, the focus of this EIS is on the revised fee structure and the estimated ADEQ revenues.

This rule proposes to increase the permit processing fee to a single hourly rate of \$66.00 from \$53.00 and \$40.00 for Title V and Non-Title V permit application review, respectively. In addition, the hourly rate would be adjusted annually for inflation beginning in 2003. Based on estimated workload hours for processing Title V and Non-Title V permits, permit processing revenues for new sources and permit amendments are expected to increase by approximately \$344,000 annually (\$136,000 and \$208,000, respectively for Title V and Non-Title V revenues).

Table 1 shows an estimate of average processing hours for Title V and Non-Title V permits by new sources and permit amendments categories. Note that general permits are not included because those processing fees are not proposed to be based upon an hourly rate. Total projected fees were calculated at an hourly rate of \$66.00. To make the comparison equitable, the same number of hours were used to estimate the current fee level, except hourly rates of \$53.00 and \$40.00 were used for TV and NTV, respectively.

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**Table 1. Proposed Fee Changes for Permit Processing of Title V (TV) and Non-Title V (NTV)**

**Sources: New Permits and Amendments\***

Source Category	Total Average Time For Processing Permits (hours)	Projected Cost for New Sources Only (\$)	Total Fee Per Category (\$)
new sources TV	4,969	\$327,954	\$327,954
permit amendments TV	5,526	NA	\$364,716
<b>SUBTOTAL (TV)</b>	<b>10,495</b>	<b>\$327,954</b>	<b>\$692,670</b>
new sources NTV	6,622	\$437,052	\$437,052
permit amendments NTV	1,359	NA	\$89,694
<b>SUBTOTAL (NTV)</b>	<b>7,981</b>	<b>\$437,052</b>	<b>\$526,746</b>
<b>TOTAL (TV + NTV)</b>	<b>18,476</b>	<b>\$765,006</b>	<b>\$1,219,416</b>

\*Projected costs based on an hourly rate of \$66.00.

Another significant proposed change is how annual revenues would be generated from Title V sources. Under the proposed rule, approximately one-half of the anticipated \$1.6 million in annual revenues would be generated from the annual fixed fee and the remainder from the annual emissions fee. Currently, ADEQ does not assess annual fixed fees for Title V sources.

Table 2 lists 54 Title V sources (Class I), distributed among 11 source categories and their corresponding fees. Annual fixed fees, shown in the 3rd column, were calculated by source category. These fixed fees by source category range from a low of \$7,900 for compressor stations to \$39,500 for cement plants and smelters. Table 3 lists the same 54 Title V sources using the current annual fees.

**Table 2. Proposed Annual Fees For Class I Title V Permitted Sources\***

Source Category	Number of ADEQ Sources Per Category	Annual Fixed Fee Per Source <sup>1</sup> (\$)	Total Annual Fixed Fee Revenue Per Category (\$)	Annual Emissions Per Category <sup>2</sup> (tons)	Total Annual Emissions Fee Revenue Per Category <sup>3</sup> (\$)	Total Annual Revenue Per Category (\$)
cement plants	2	\$39,500	\$79,000	6,920	\$81,310	<b>\$160,310</b>
compressor stations	16	\$7,900	\$126,400	6,025	\$70,794	<b>\$197,194</b>
lime plants	2	\$37,000	\$74,000	2,848	\$33,464	<b>\$107,464</b>
mines	7	\$9,300	\$65,100	1,880	\$22,090	<b>\$87,190</b>
others	6†	\$9,900	\$59,400	484	\$5,687	<b>\$65,087</b>
others with CEM	1	\$12,700	\$12,700	207	\$2,432	<b>\$15,132</b>
others—landfill	5†	\$9,900	\$49,500	400	\$4,700	<b>\$54,200</b>
paper mills	3	\$12,700	\$38,100	6,187	\$72,697	<b>\$110,797</b>
smelters	3	\$39,500	\$118,500	12,800	\$150,400	<b>\$268,900</b>
utilities - natural gas	5	\$10,200	\$51,000	498	\$5,852	<b>\$56,852</b>
utilities - other	4	\$20,200	\$80,800	30,880	\$362,840	<b>\$443,640</b>
<b>TOTAL</b>	<b>54</b>		<b>\$754,500</b>	<b>69,129</b>	<b>\$812,266</b>	<b>\$1,566,766</b>

\*Note that this table does not reflect permit processing costs.

†Estimates only.



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<sup>1</sup>Fixed fees were generated using the Excel Solver Tool that ratioed permit administration hours based on the WLA.

<sup>2</sup>Emissions tonnages were derived from calendar year 1998 emissions inventory with a source cap of 4,000 tons per pollutant. The table excludes certain fugitives emissions which some source will pay, though any fee increase is small.

<sup>3</sup>Total emissions fees were calculated by multiplying emissions tonnage in column 5 by \$11.75 per ton.

**Table 3. Current Annual Fees For Class I Title V Sources\***

Source Category	Number of ADEQ Sources Per Category	Total Emissions Per Category <sup>1</sup> (annual tons)	Total Emissions Fee per Category <sup>2</sup> (\$)
cement plants	2	6,882	\$261,929
compressor stations	16	6,026	\$229,350
lime plants	2	2,720	\$103,523
mines	7	2,860	\$108,852
others	11	927	\$35,282
others with CEM	1	207	\$7,878
paper mills	3	7,877	\$299,799
smelters	3	15,902	\$605,230
utilities--natural gas	5	517	\$19,677
utilities--coal	4	29,688	\$1,129,925
TOTAL	54	73,606	\$2,801,445

\* Excludes Administrative Fees for Permits.

<sup>1</sup> Pollutant tonnages represent emissions billed for calendar year 1998 with a source cap of 4,000 tons per pollutant. The amounts represent the total per source category.

<sup>2</sup> Total emissions fees were calculated by multiplying total emissions tons by the current rate of \$38.06 per ton.

Comparing Table 2 to Table 3, these same 54 sources would generate approximately \$1.2 million less in annual total revenue under the proposed rule. This reduction better reflects the actual costs attributable to Class I Title V sources.

In addition to these changes for Class I sources, fees for Class II Title V and Class II Non-Title V would increase under this proposed rule to better reflect the share of costs directly related to Class II permits. Tables 4 and 5 show that annual revenues from these sources would more than double under the proposed scenario. Thus, ADEQ expects annual revenues to increase from just over \$700,000 to approximately \$2 million from Class II sources.

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**Table 4. Proposed Annual Fees For Permitted Class II Title V (TV) and  
Class II Non-Title V (NTV) Sources**

Source Category	Number of Sources Per Category	Fixed Fee Per Source (\$)	Total Fee Per Category (\$)
stationary Title V	22	\$5,000	\$110,000
portable Title V	69	\$5,000	\$345,000
general permit Title V	82	\$3,000	\$246,000
general permit small source Title V (dry cleaners)	27	\$500	\$13,500
<b>SUBTOTAL</b>	<b>200</b>		<b>\$714,500</b>
stationary Non-Title V	271	\$3,250	\$880,750
portable Non-Title V	66	\$3,250	\$214,500
general permit Non-Title V	129	\$2,000	\$258,000
general permit Non-Title V(crematoriums)	20	\$1,000	\$20,000
general permit Non-Title V(gas stations) <sup>1</sup>	60	\$500	\$30,000
<b>SUBTOTAL</b>	<b>546</b>		<b>\$1,403,250</b>
<b>TOTAL</b>	<b>746</b>		<b>\$2,117,750</b>

<sup>1</sup> General permits in development stage

**Table 5. Current Fees for Class II Title V (TV) and  
Class II Non-Title V (NTV)\***

Source Category	Number of Sources Per Category	Permit Administration Fee (\$)	Permit Administration Fee Per Category (\$)
stationary TV	22	\$2,500	\$55,000
portable TV	69	\$2,500	\$172,500
general permit TV	82	\$1,500	\$123,000
small source Title V	27	\$260	\$7,020
<b>SUBTOTAL (TV)</b>	<b>200</b>		<b>\$357,520</b>
stationary NTV	271	\$955	\$258,805
portable NTV	66	\$955	\$63,030
general permit NTV	84	\$390	\$32,760
<b>SUBTOTAL (NTV)</b>	<b>421</b>		<b>\$354,595</b>
<b>TOTAL (TV + NTV)</b>	<b>621</b>		<b>\$712,115</b>

\*For simplicity, this table does not show testing or inspection fees or complex sources.

This proposed change in the fee structure would also allow those counties administering their own permit programs to more fully recover their program costs. Currently, not all permit costs can be recovered by Maricopa, Pima, and Pinal Counties because of ADEQ's fee schedule and the requirement under A.R.S. § 49-112(B) that the county fee be approximately equal to the state fee for a similar permit or approval.

Table 6 is included to show the variety of sources permitted by ADEQ, Maricopa County, Pima County, and Pinal County.

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**Table 6. Comparison of Number of Sources Permitted by ADEQ, Maricopa, Pima, and Pinal Counties**  
**Includes Class I, Class II Title V and Class II Non-Title V**

<b>Class I Title V Sources (available SIC/NAICS Code)</b>	<b><u>ADEQ</u></b>	<b><u>MARICOPA</u></b>	<b><u>PIMA</u></b>	<b><u>PINAL</u></b>
aerospace (326299, 336411, 336412, 334511)	-	7	-	-
cement plants (32731)	2	-	-	-
boilers	-	4	-	-
compressor stations (48621)	16	1	2	2
electronics(334412, 334413, 334418, 33511)	-	7	-	-
expandable foam (326140)	-	4	-	-
foundries (3315)	-	4	-	-
landfills (562212)	7	-	-	-
lime plants (32741)	2	-	-	-
mines	7	-	1	1
mobile home mfg. (321991)	-	5	-	-
others	11	10	17	5
others with continuous emission monitoring	1	-	-	-
paper (32212)	3	-	-	-
paper coaters (322232, 333415)	-	2	-	-
petroleum prod. terminal facilities (42271)	-	6	-	-
polymeric fabric coaters (334419)	-	3	-	-
reinforced plastics (325991, 325191, 326199, 327991, 336612)	-	11	-	-
semiconductor fabrication (334413)	-	7	-	-
smelters (331411)	3	-	-	-
natural gas utilities (221112)	5	13	2	2
coal utilities (221112)	4	-	1	-
vitamin/pharmaceutical mfg. (32541, 32562)	-	3	-	-
wood furniture (337110, 337112, 337125, 337129)	-	15	-	-
<b>TOTAL</b>	<b>54</b>	<b>109</b>	<b>23</b>	<b>10</b>

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<b>Class II Title V Sources</b>	<b><u>ADEQ</u></b>	<b><u>MARICOPA</u></b>	<b><u>PIMA</u></b>	<b><u>PINAL</u></b>
stationary	22	56	10	11
portables	69	2		-
general permits	82	-	3	-
small sources	27	246	40	1
<b>TOTAL</b>	<b>200</b>	<b>304</b>	<b>53</b>	<b>12</b>

<b>Class II Non Title V</b>	<b><u>ADEQ</u></b>	<b><u>MARICOPA</u></b>	<b><u>PIMA</u></b>	<b><u>PINAL</u></b>
stationary	271	189	153	106
portables	66	-	-	-
general permits	209	2043	7	1
large minor	-	410	-	-
small minor	-	664	-	-
sources less than ADEQ threshold	-	885	-	140
<b>TOTAL</b>	<b>546200</b>	<b>4191</b>	<b>160</b>	<b>247</b>

#### Small Business Impact

As a result of the changes proposed in this rule, costs would be shifted from Class I to Class II sources to more accurately reflect the costs of administering Class II permits. In general, Class II sources are smaller than Class I sources. The final economic, small business and consumer impact statement for this rule must contain a statement of the probable impact of the rule on small businesses. "Small business" is defined in A.R.S. § 41-1001 as "a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations." ADEQ specifically solicits input from sources that could be small businesses under this definition on the administrative and other costs required for compliance with the proposed rulemaking, and any other information relevant to the economic, small business, and consumer impact statement.

#### Rule Impact Reduction on Small Businesses

A.R.S. § 41-1035 requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rulemaking. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. The methods to be considered are:

- (1) Establish less stringent compliance or reporting requirements in the rule for small businesses.
- (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
- (3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
- (4) Establish performance standards for small businesses to replace design or operational standards in the rule.
- (5) Exempt small businesses from any or all requirements of the rule.

The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are to:

- (1) Provide for the prevention and abatement of all air pollution (A.R.S. 49-104(A)(11)),
- (2) Implement a fee system for permitted sources under A.R.S. § 49-426(E), and

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(3) Ensure EPA approval of the fee system for Title V sources under 40 CFR 70 (see A.R.S. § 49-426(E)(1)).

ADEQ has evaluated each of the five listed methods and has concluded that all of the methods that are legal and feasible have already been implemented. The statutory directive that permit fees be related to costs prohibits ADEQ from basing permit fees based on the size of the source.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: David Lillie  
Address: 3033 North Central Avenue T5109B  
Phoenix, Arizona 85012  
Telephone: (602) 207-2295  
Fax: (602) 207-2366  
E-mail: DHL@ev.state.az.us

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Oral Proceeding: June 26, 2001, 9:30 a.m.

Close of comment: 5:00 p.m., June 29, 2001

Location: Arizona Department of Environmental Quality, Room 1710, 3033 N. Central, Phoenix, AZ (Please call 602-207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

Nature: Public hearing with opportunity for formal comments on the record regarding the proposed rules and the submittal of the rules to the Environmental Protection Agency as a revision to the State Implementation Plan.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rule follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AIR POLLUTION CONTROL**

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

Section  
R18-2-301. Definitions  
R18-2-326. Fees Related to Individual Permits

**ARTICLE 5. GENERAL PERMITS**

Section  
R18-2-511. Fees Related to General Permits

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

**R18-2-301. Definitions**

The following definitions, and the definitions contained in Article 3 of this Chapter and A.R.S. § 49-401.01 shall apply to this Article unless the context otherwise requires:

1. No change.
2. "Billable permit action" means the issuance or denial of a new permit, significant permit revision, minor permit revision, or the renewal of an existing permit.
23. No change.

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4. "CEM" means a continuous emission monitoring system as defined in R18-2-101.  
~~35.~~ No change.  
~~46.~~ No change.  
~~57.~~ No change.  
~~68.~~ No change.  
~~79.~~ No change.  
10. "Itemized bill" means a breakdown of the permit processing time that includes the tasks performed, the hours to perform those tasks, and the name of the employees who performed the tasks.  
~~811.~~ No change.  
12. "NAICS" means the 5 or 6-digit North American Industry Classification System-United States, 1997, number for industries assigned by the National Census Bureau of the U.S. Department of Commerce.  
13. "Permit processing time" means all time spent by Air Quality Division staff or consultants on tasks specifically related to the processing of an application for the issuance, denial, or renewal of a particular permit or permit revision.  
~~914.~~ No change.  
~~1015.~~ No change.  
~~1116.~~ No change.  
~~1217.~~ No change.  
18. "Small source" means a source with the potential to emit, without controls, less than significant, but is required to obtain a permit solely because it is subject to a standard under 40 CFR 63.  
19. "Startup" means the setting in operation of a source for any purpose.  
20. "Synthetic minor" means a source with a permit containing voluntarily accepted emissions limitations, controls, or other requirements (e.g., a cap on production rates, maximum hours of operation, or type of fuel) under R18-2-306.01 in order to reduce potential to emit below the major source threshold.

**R18-2-326. Fees Related to Individual Permits**

- A.** ~~The fees in this Section related to permits are based on estimated costs for the Department of Environmental Quality air pollution stationary source permitting program under this Article. The fees listed shall not be construed as representative of costs for any other permitting authority.~~
- B.** ~~For the purposes of this Section and R18-2-511, the following apply:~~
- ~~1. The following sources shall be considered to be required to obtain a permit pursuant to title V of the Act:~~
    - ~~a. Any source required to have a Class I permit.~~
    - ~~b. Any source allowed to operate under a Class II permit pursuant to being listed in R18-2-302(B)(2)(b)(i) or (ii).~~
    - ~~c. Any source that qualifies for a Class II permit pursuant to being listed in R18-2-302(B)(2) but that elects to apply for a Class I permit.~~
  - ~~2. The following sources shall be considered complex:~~
    - ~~a. Agricultural chemical manufacturers and processors.~~
    - ~~b. Commercial ethylene oxide sterilizers.~~
    - ~~c. Foundries.~~
    - ~~d. Glass bead manufacturers.~~
    - ~~e. Lumber mills.~~
    - ~~f. Mining and mineral processing facilities, except facilities engaged solely in the extraction and beneficiation of ores and minerals. For the purposes of this paragraph, "beneficiation" is limited to the activities specified in 40 CFR 261.4(b)(7), as incorporated by reference in R18-8-261(A).~~
    - ~~g. Paper mills.~~
    - ~~h. Refineries.~~
    - ~~i. Plastics extrusion facilities.~~
    - ~~j. Printers with actual emissions of VOC in excess of 25 tons per year.~~
    - ~~k. Textile manufacturers.~~
    - ~~l. Manufacturers of tires and related products.~~
  - ~~3. "Existing source" means a source that has commenced construction and for which one of the following is true:~~
    - ~~a. Held a valid installation or operating permit as of September 1, 1993, or~~
    - ~~b. Has been issued a permit pursuant to A.R.S. § 49-426(A) after September 1, 1993.~~
  - ~~4. "Direct hours spent processing the permit" means the time spent by office of air quality technical staff or consultants on tasks specifically related to the processing, issuance, or denial of a particular permit or permit revision, including pre-application activities and time at a public hearing. Direct hours shall not include time inspecting a facility, travel to or from any facility or permit hearing, or training.~~
- C.** ~~The owner or operator of each source required to obtain a permit pursuant to title V of the Act shall pay an annual emissions fee equal to \$28.15 per year per ton of actual emissions of all regulated pollutants or the minimum specified in para-~~

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graph (5) of this subsection, whichever is greater. The rate of \$28.15 shall be adjusted for the date of payment pursuant to paragraph (4) of this subsection. Except as provided in subsection (D) of this Section, the annual emissions fee is due on January 1 of each year but may be paid in two equal parts, one half on January 1 and one half on July 1. In calculating the fee, all of the following apply:

1. For purposes of this subsection, actual emissions means the actual quantity of all regulated pollutants emitted during the most recent calendar year ending at least twelve months before the date the fee is due unless some other period is specified by rule, determined pursuant to R18-2-327, or pursuant to an emissions inventory required prior to the effective date of R18-2-327.
2. For purposes of this Section, regulated pollutants consist of the following:
  - a. Nitrogen oxides or any volatile organic compounds.
  - b. Conventional air pollutants, except carbon monoxide.
  - c. Any pollutant that is subject to any standard promulgated under section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur and reduced sulfur compounds.
  - d. Any federally listed hazardous air pollutant that is subject to a standard promulgated by the Administrator under section 112 of the Act or other requirement established under section 112 of the Act, including sections 112(g) and (j) of the Act. Federally listed hazardous air pollutants subject to requirements established under section 112 of the Act include the following:
    - i. Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be considered major under section 112(a)(1) of the Act shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Act.
    - ii. Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.
3. The following emissions of regulated pollutants shall be excluded from a source's actual emissions for purposes of this subsection:
  - a. Emissions of a regulated pollutant from the source in excess of 4,000 tons per year.
  - b. Emissions of any regulated pollutant that are already included in the fee calculation for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM(10).
  - c. Emissions from insignificant activities excluded from the permit for the source pursuant to R18-2-304(E)(7).
4. Beginning in 1994, the \$28.15 per ton per year fee shall be adjusted each year on January 1 to reflect the increase, if any, by which the Consumer Price Index for the most recent year exceeds the Consumer Price Index for the year 1989. The Consumer Price Index for any year is the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
5. Notwithstanding previous provisions of this subsection, the following minimum annual permit fees apply:
  - a. New major sources that have not yet been required to report emission quantities pursuant to R18-2-327 for which an annual emissions fee is due; \$5,000.
  - b. All other sources except those listed in paragraph (6) of this subsection; \$2,500.
6. Notwithstanding any other provision of this subsection, sources that have uncontrolled emissions that are less than significant and that are subject to a permit requirement solely because they are subject to a standard under section 112 of the Act shall pay an annual emissions fee of \$260.

**D.** The following payment schedules apply to annual emission fees:

1. For sources that have commenced construction before the effective date of this Section, the initial first half payment shall be due on January 1, 1994, or on the 60th day following the effective date of this Section, whichever is later, and shall be based on the emissions inventory for calendar year 1990 or the appropriate minimum fee in subsection (C)(5) of this Section. The initial second half payment shall be due 120 days after the first.
2. For sources that commence construction after the effective date of this Section, the initial first half payment for the calendar year they commence construction shall be due on the 60th day following the commencement of construction and shall be based on the appropriate minimum fee in subsection (C)(5) of this Section. The initial second half payment shall be due 120 days after the first. Half payments for subsequent calendar years shall be due on each January 1 or July 1 and shall be based on the appropriate minimum fee until an annual emissions fee is due based on emissions reported for the most recent calendar year ending at least 12 months before the date the fee is due.
3. For sources that become subject to a permit requirement pursuant to title V of the Act through a promulgation of the Administrator after the effective date of this Section, the initial first half payment for that calendar year shall be due on the 60th day after the source becomes subject to the permit requirement and shall be based on the appropriate minimum fee in subsection (C)(5). The initial second half payment shall be due 120 days after the first. Half payments for subsequent calendar years shall be due on each January 1 and July 1 and shall be based on the appropriate minimum fee until an annual emissions fee is due based on emissions reported for the most recent calendar year ending at least 12 months before the date the fee is due.

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- E.** The owner or operator of an existing source that is required to obtain a permit pursuant to state law and is not required to obtain a permit pursuant to title V of the Act shall pay the following fees:
1. For sources that are complex pursuant to subsection (B)(2) of this Section:
    - a. An annual permit processing fee of \$1,097 plus an annual inspection fee of \$1,560.
    - b. A performance test fee of \$635 for any year during which such test will be performed.
  2. For sources that are not complex pursuant to subsection (B)(2) of this Section:
    - a. An annual permit processing fee of \$565 plus an annual inspection fee of \$390.
    - b. A performance test fee of \$488 for any year during which such test will be performed.
- Any annual fee in this subsection may be paid in two equal parts and is due at the times listed in subsection (F) of this Section. Performance test fees shall be due when the test protocol is submitted.
- F.** The following payment schedules apply to the annual fees specified in subsection (E) of this Section:
1. For sources that are existing on the effective date of this Section, the initial first half payment shall be due on January 1, 1994, or on the 60th day following the effective date of this Section, whichever is later. The initial second half payment shall be due 120 days after the first. Half payments for subsequent calendar years shall be due on each January 1 or July 1.
  2. For sources that are not existing on the effective date of this Section, the initial first half payment shall be due on the 60th day after they become existing. The initial second half payment shall be due 120 days after the first. Half payments for subsequent calendar years shall be due on each January 1 or July 1.
- G.** Before the issuance of a permit to construct and operate a source that is required to obtain a permit pursuant to title V of the Act, the applicant for the permit shall pay to the Director a fee billed by the Director representing the total actual cost of reviewing and acting upon the application. The minimum fee chargeable pursuant to this subsection shall be \$2,500, and the maximum fee shall be \$30,000. The sum of \$13,000 shall be due with the application in the case of a Class I permit. The sum of \$2,000 shall be due with the application in the case of any source allowed to operate under a Class II permit pursuant to being listed in R18-2-302(B)(2)(b)(i) or (ii).
- H.** Before the issuance of a permit to construct and operate a source that is subject to a permit requirement pursuant only to state law, the applicant for the permit shall pay to the Director a permit processing fee of \$6520 for a complex source and \$3040 for a source that is not complex. The source may elect to pay one fifth of the amount before issuance and one fifth of the amount during each of the next four years before the anniversary date of the permit. Subsequent to the issuance of the permit, the source shall be subject to the applicable inspection and performance test fees pursuant to subsection (E) of this Section.
- I.** Each source required to obtain a permit pursuant to title V of the Act applying for a permit revision pursuant to R18-2-319 or R18-2-320 or the transfer of a permit pursuant to R18-2-323 shall remit to the Director, at the time the application or notice is submitted, an application fee as follows:
1. \$10,000 for a significant permit revision that is a result of a major modification.
  2. \$1,500 for any other significant permit revision.
  3. \$500 for a minor permit revision.
  4. \$424 for a permit transfer.
- Before the issuance of a permit revision pursuant to R18-2-319 or R18-2-320 under this subsection, the applicant for the permit revision shall pay to the Director a fee billed by the Director representing the total actual cost of reviewing and acting upon the application minus any application fee remitted. The maximum fee chargeable pursuant to this subsection shall be \$25,000 for any significant permit revision and \$10,000 for any minor permit revision. The fee for each permit transfer under this subsection shall be \$424.
- J.** Each source required to obtain a permit pursuant to state law and not required to obtain one pursuant to title V of the Act applying for a permit revision pursuant to R18-2-319 or R18-2-320 or the transfer of a permit pursuant to R18-2-323 shall remit to the Director, at the time the application or notice is submitted, an application fee as follows:
1. \$2,400 for a significant permit revision for a complex source.
  2. \$700 for any other significant permit revision.
  3. \$450 for a minor permit revision.
  4. \$318 for a permit transfer.
- Before the issuance of a permit revision pursuant to R18-2-319 or R18-2-320 under this subsection, the applicant for the permit revision shall pay to the Director a fee billed by the Director representing the total actual cost of reviewing and acting upon the application minus any application fee remitted. The maximum fee chargeable pursuant to this subsection shall be \$25,000 for any significant permit revision and \$10,000 for any minor permit revision. The fee for each permit transfer under this subsection shall be \$318.
- K.** Any person who receives a final bill from the Director for the processing of a permit under this Section may request an informal review of the hours billed and may pay the bill under protest. If the bill is paid under protest, the Director shall issue the permit if it would be otherwise issuable after normal payment. The request shall specify the areas of dispute and be made in writing to the Director within 30 days of the date of receipt of the final bill. Unless the Director and applicant agree otherwise, the informal review shall take place within 30 days of the Director's receipt of the request. Notice of the



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time and place of informal review shall be mailed to the requester at least ten working days prior to the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within ten working days after the informal review.

- L.** The Director's decision after the informal review shall become final unless within thirty days after receipt of the decision the applicant requests in writing a hearing pursuant to R18-1-202.
- M.** For the purposes of subsections (G) and (I), the hourly rate applied by the Director for all direct hours spent processing the permit shall be \$53.00 per hour. For the purposes of subsection (J), the hourly rate applied by the Director for all direct hours spent processing the permit shall be \$40.00 per hour.
- N.** An applicant for a Class I or Class II permit or any revisions to such permits may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days in advance of filing the application. Any such request shall be accompanied by the standard application fees as described in this Section plus an additional payment of 50% of those fees. The fees shall be non-refundable to the extent of the Director's costs in accelerating the processing if the Director undertakes the accelerated processing as described below:
1. When an applicant has requested accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision in accordance with the following schedule:
    - a. For applications for initial Class I and II permits governed by R18-2-302 or significant permit revisions governed by R18-2-320, the proposed permit or permit revision shall be issued within 120 days after the Director determines that the application is complete.
    - b. For minor permit revisions governed by R18-2-319, the permit revision shall be issued within 60 days after receiving an application.
  2. At any time after an applicant has requested accelerated permit processing, the Director may request an additional advance payment fee based on the most recent estimated cost of accelerating the processing of the application.
  3. Before issuing a permit or permit revision pursuant to this subsection, the applicant shall pay to the Director all regular permit processing and other fees due, and, in addition, the difference between the actual cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring or supervising the work of outside consultants, and all advance payment fees submitted. In the event all payments made exceed actual accelerated permit costs, excess advance payments shall be refunded. Nothing in this Section shall affect the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.
  4. Any additional charges incurred as a result of the accelerated permit processing shall not be applied toward the maximum fees established in subsections (G) and (I) for a source that is required to obtain a permit pursuant to Title V of the Act.
- A.** Source Categories. A source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees shall be based on the source being classified in one of the following 3 categories:
1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
  2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
  3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) but for which R18-2-302(B)(2)(a)(i) or (ii) does not apply.
- B.** Fees for Permit Actions. Class I Title V sources, Class II Title V sources, and Class II Non-Title V sources shall pay to the Director \$66 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action. Upon completion of permit processing activities, but before issuance or denial of the permit action, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit action until the final bill is paid in full.
- C.** Class I Title V Fees. Class I Title V sources that have undergone initial startup by January 1 shall annually pay to the Director a fixed fee plus an emissions based fee as follows:
1. The applicable fixed fee from the table below, as adjusted annually under subsection (H). The fee is due by March 31, or 60 days after the Director mails the invoice under subsection (F), whichever is later.

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<b><u>Class I Title V Source Category</u></b>	<b><u>Fixed Fee</u></b>
<u>Aerospace</u>	<u>\$12,900</u>
<u>Cement Plants</u>	<u>\$39,500</u>
<u>Combustion/Boilers</u>	<u>\$9,600</u>
<u>Compressor Stations</u>	<u>\$7,900</u>
<u>Electronics</u>	<u>\$12,700</u>
<u>Expandable Foam</u>	<u>\$9,100</u>
<u>Foundries</u>	<u>\$12,100</u>
<u>Landfills</u>	<u>\$9,900</u>
<u>Lime Plants</u>	<u>\$37,000</u>
<u>Copper &amp; Nickel Mines</u>	<u>\$9,300</u>
<u>Gold Mines</u>	<u>\$9,300</u>
<u>Mobile Home Manufacturing</u>	<u>\$9,200</u>
<u>Paper Mills</u>	<u>\$12,700</u>
<u>Paper Coaters</u>	<u>\$9,600</u>
<u>Petroleum Products Terminal Facilities</u>	<u>\$14,100</u>
<u>Polymeric Fabric Coaters</u>	<u>\$12,700</u>
<u>Reinforced Plastics</u>	<u>\$9,600</u>
<u>Semiconductor Fabrication</u>	<u>\$16,700</u>
<u>Copper Smelters</u>	<u>\$39,500</u>
<u>Utilities - Natural Gas</u>	<u>\$10,200</u>
<u>Utilities - Fossil Fuel Except Natural Gas</u>	<u>\$20,200</u>
<u>Vitamin/Pharmaceutical Manufacturing</u>	<u>\$9,800</u>
<u>Wood Furniture</u>	<u>\$9,600</u>
<u>Others</u>	<u>\$9,900</u>
<u>Others w/ Continuous Emissions Monitoring</u>	<u>\$12,700</u>

2. An emissions based fee of \$11.75 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by March 31, or 60 days after the Director mails the invoice under subsection (F), whichever is later.
- a. For purposes of this Section, actual emissions means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
- b. For purposes of this Section, regulated pollutants consist of the following:
- i. Nitrogen oxides and any volatile organic compounds.
  - ii. Conventional air pollutants, except carbon monoxide and ozone.
  - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds.
  - iv. Any federally listed hazardous air pollutant.
- c. For purposes of this Section, the following emissions of regulated pollutants shall be excluded from a source's actual emissions:
- i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
  - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM10;
  - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
  - iv. Fugitive emissions of PM10 from activities other than crushing, belt transfers, screening, and stacking; and
  - v. Fugitive emissions of VOC from solution-extraction units.

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- d. The rate for emission based fees shall be adjusted every January 1, beginning on January 1, 2003, by multiplying \$11.75 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2001. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

**D.** Class II Title V Fees. Class II Title V sources that have undergone initial startup by January 1 shall pay the applicable Fixed Fee from the table below, adjusted annually under subsection (H), for that calendar year, and annually thereafter. The fee is due by March 31 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

<b><u>CLASS II Title V Source Category</u></b>	<b><u>Fixed Fee</u></b>
<u>Synthetic minor sources, except portable sources</u>	<u>Fixed fee from Class I Title V table for category</u>
<u>Stationary</u>	<u>\$5,000</u>
<u>Portables</u>	<u>\$5,000</u>
<u>Small Source</u>	<u>\$500</u>

**E.** Class II Non-Title V Fees. Class II Non-Title V sources that have undergone initial startup by January 1 shall pay the applicable Fixed Fee from the table below, adjusted annually under subsection (H), for that calendar year, and annually thereafter. The fee is due by March 31 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

<b><u>Class II Non-Title V Source Category</u></b>	<b><u>Fixed Fee</u></b>
<u>Stationary</u>	<u>\$3,250</u>
<u>Portables</u>	<u>\$3,250</u>
<u>Gasoline Service Stations</u>	<u>\$500</u>

**F.** The Director shall mail each source an invoice for all fees due under subsections (C), (D), or (E) by January 31.

**G.** Any person who receives a final itemized bill from the Director under this Section for a permit action may request an informal review of the hours billed and may pay the bill under protest. If the bill is paid under protest, the Director shall take final action on the permit.

1. The request shall be made in writing, and received by the Director within 30 days of the source's receipt of the final bill. Unless the Director and applicant agree otherwise, the informal review shall take place within 30 days of the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the requestor at least 10 business days prior to the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requestor within 10 business days after the informal review date.
2. The Director's decision after informal review shall become final unless, within 30 days after source's receipt of the informal review decision, the applicant requests a hearing under R18-1-202.

**H.** The hourly rate shall be adjusted every January 1, to the nearest ten cents per hour, beginning on January 1, 2003, by multiplying \$66 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2001. The fixed fees listed in subsections (C), (D), and (E) shall be adjusted every January 1, to the nearest \$10, beginning on January 1, 2003, by multiplying the fixed fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2001. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

**I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days in advance of filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee shall be non-refundable to the extent of the Director's costs in accelerating the processing if the Director undertakes the accelerated processing as described below:

1. When an applicant has requested accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision in accordance with the following schedule:
  - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
  - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
2. At any time after an applicant has requested accelerated permit processing, the Director may require additional advance payment based on the most recent estimate of additional costs.

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3. Upon completion of permit processing activities but before issuance or denial of the permit action, the Director shall send notice of the decision to the applicant along with a final bill. The total fee for non-Title V sources shall not exceed \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring or supervising the work of outside consultants, and all advance payments submitted. In the event all payments made exceed actual accelerated permit costs, excess advance payments shall be refunded. Nothing in this subsection shall affect the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.

**J.** Inactive Sources. Permitted sources that have undergone initial startup but were shut down for the entire preceding calendar year shall pay 50% of the Fixed Fee required under subsection (C), (D), or (E).

**K.** Transition.

1. Subsections (A) through (J) of this Section shall be effective January 1, 2002. The first Fixed Fees shall be due on March 31, 2002.

2. Except as provided in subsection (b), all fees incurred after January 1, 2002, shall be payable in accordance with the rates contained in this Section.

a. Emission based fees for calendar year 2000 shall be billed at \$11.75 per ton and be due March 31, 2002.

b. The hourly rates and maximum fees for a new permit or permit revision shall be those in effect when the application for the permit or revision was determined complete.

c. Fees accrued but not yet paid before the effective date of this rule shall remain as obligations to be paid to the Department.

**ARTICLE 5. GENERAL PERMITS**

**R18-2-511. Fees Related to General Permits**

**A.** Each source that applies for authority to operate under a general permit shall pay a \$540 application processing fee. This fee applies to any source that intends to continue operating under the authority of a general permit that has been proposed for renewal.

**B.** For each calendar year during which a source required to obtain a permit pursuant to title V of the Act is covered by a general permit, the source shall pay an annual emissions fee as set forth in R18-2-326(C) and (D), except that the annual emissions fee for sources described in R18-2-326(C)(6) shall be \$260 and the minimum annual emissions fee for all other sources with authority to operate under a general permit shall be \$1,500. When a source is granted authority to operate under a general permit, the initial annual emissions fee for the source shall be due 60 days after the authority is granted and shall be based on emissions for the most recent calendar year ending at least 12 months previous to the date the fee is due, or, for sources granted authority to operate in calendar year 1994, for 1990. The source may deduct from the initial payment a portion of an amount paid pursuant to R18-2-326(C) prorated for the amount of time the source was covered by an individual permit in that calendar year. Subsequent payments shall be due on January 1 and July 1 of each year. For the purposes of this subsection, "required to obtain a permit pursuant to title V of the Act" shall have the same meaning as in R18-2-326(B)(1).

**C.** For each calendar year during which a source required to obtain a permit pursuant only to state law is covered by a general permit, the source shall pay an annual inspection fee and any applicable performance test fee as set forth in R18-2-326(E)(1) or (2), whichever is applicable. The annual inspection fee is payable in two equal parts. The initial first half payment is due 60 days after a source is granted authority under R18-2-503. The initial second half payment shall be due 120 days after the first. Half payments for subsequent calendar years shall be due on each January 1 or July 1. Performance test fees shall be due when the test protocol is submitted.

**A.** Permit Processing Fee. A source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of the application. This fee applies to any source that intends to continue operating under the authority of a general permit that has been proposed for renewal.

**B.** Fixed Fee. Sources with authority to operate under a general permit shall pay, for each calendar year, the applicable Fixed Fee from the table below, by March 31 or 60 days after the Director mails the invoice, whichever is later.

<b>General Permit Source Category</b>	<b>Fixed Fee</b>
<u>Class I Title V General Permits</u>	<u>Fixed Fee for category from R18-2-326(C)</u>
<u>Class II Title V Small Source</u>	<u>\$500</u>
<u>Other Class II Title V General Permits</u>	<u>\$3,000</u>
<u>Class II Non-Title V Gasoline Service Stations</u>	<u>\$500</u>
<u>Class II Non-Title V Crematories</u>	<u>\$1,000</u>
<u>Other Class II Non-Title V General Permits</u>	<u>\$2,000</u>

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R20-6-1801	New Section
R20-6-1802	New Section
R20-6-1803	New Section
R20-6-1804	New Section
R20-6-1805	New Section
R20-6-1806	New Section
R20-6-1807	New Section
R20-6-1808	New Section
R20-6-1809	New Section
R20-6-1810	New Section
R20-6-1811	New Section
R20-6-1812	New Section
R20-6-1813	New Section
R20-6-1814	New Section
R20-6-1815	New Section
R20-6-1816	New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 20-1001 through 20-1004, 20-1008, 20-1009, and 20-1015(A)

Implementing statutes: A.R.S. §§ 20-142, 20-143, 20-106 and 20-1001 through 20-1019

**3. List all previous notices appearing in the register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 4512, December 1, 2000

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret L. McClelland

Address: Department of Insurance  
2910 North 44th Street, 2nd Floor  
Phoenix, Arizona 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Prepaid dental plan organizations (Organizations) in Arizona have traditionally been subject to dual regulation by the Arizona Department of Health Services (ADHS) and the Arizona Department of Insurance (Department). The Department is the licensing authority and oversees financial condition, certain aspects of market conduct, policy forms and advertising, and disciplinary matters. ADHS oversees the health services aspect of the Organizations. During the 2000 Session, the Arizona Legislature passed SB 1172 which, effective July 1, 2001, places all regulatory authority over Organizations with the director of the Department (director) and removes ADHS as a regulator of Organizations. The proposed rules provide the framework for regulation of Organizations by the Department.

The Department convened an informal advisory work group to assist the Department in developing these rules. The work group is made up of representatives of a wide spectrum of stakeholders interested in prepaid dental rules, including dentists, prepaid dental plans, and employers. The work group members had an opportunity to review and make comments on two drafts of the proposed rules. The Department considered each of those comments in drafting the proposed rules.

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The proposed rules will establish definitions, as well as requirements for application for certificate of authority, monitoring, program of compliance, dental care plans, geographic areas served, the chief executive officer, the dental director, maintenance of dental records, quality improvement, and other requirements necessary for regulation of pre-paid dental plans. The proposed rules incorporate many requirements that currently exist in the ADHS rules under 9 A.A.C. 23, Article 4.

**Specific Section-By-Section Explanation of This Proposal**

R20-6-1801 contains definitions for Article 18.

R20-6-1802 establishes requirements for application for the Certificate of Authority.

R20-6-1803 establishes requirements for the chief executive officer.

R20-6-1804 establishes qualifications and functions of the dental director.

R20-6-1805 establishes the requirements for reporting changes in the written program of compliance, and the information that must be submitted to the Department quarterly or annually.

R20-6-1806 establishes basic dental services.

R20-6-1807 establishes the requirements for a system for delivery of service.

R20-6-1808 establishes the requirements for designating the geographic areas that will be served by the Organization's prepaid dental plan will serve.

R20-6-1809 establishes the requirements for the Organization's contracts with providers.

R20-6-1810 establishes the requirements for maintenance of member dental records and certain business records.

R20-6-1811 establishes the standards for quality improvement.

R20-6-1812 establishes the requirements for confidentiality of records.

R20-6-1813 establishes the requirements for assignment of members to providers.

R20-6-1814 establishes the requirements for disclosure of information.

R20-6-1815 establishes the requirements for filing an annual statement with the director.

R20-6-1816 establishes the requirements, application, examination and licensing of agents.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business and consumer impact:**

The Department believes that the benefits of these rules will outweigh the costs.

There is an existing regulatory scheme at the Arizona Department of Health Services (ADHS) and the Department with which Organizations already generally comply. When the regulatory authority currently exercised by ADHS passes to the Department on July 1, 2001, The Department will absorb economic impacts currently absorbed by ADHS, as prescribed in the controlling legislation. The Department will transfer 2 FTEs from ADHS to carry out the program duties at the Department. The Department will also incur the costs of administering the program. It is anticipated that there will be a minimal economic impact on the Secretary of State and the Governor's Regulatory Review Council associated with the rulemaking process. The proposed rules will impose no burden on consumers and will provide some intangible benefit to consumers who can get "one-stop shopping" at the Department, rather than having to address complaints and concerns to 2 regulatory agencies. Similarly, the proposed rules may also benefit the Organizations because they will have all regulatory compliance issues addressed by a single agency.

There may be a some economic impact on Organizations and providers of dental services (providers) that are small businesses. Most Organizations currently comply with many requirements of this rulemaking. However, Organizations may incur costs as a result of new requirements that the dental director be physically present daily within the

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Arizona service area, and from an increase in the required number of required quality improvement meetings. An Organization could incur costs for having to refer a member out of network.

Additional impacts may result from the requirement for an assignment process that restricts the number of unassigned members, and from the requirement for a continuous provider recredentialing process that updates information obtained in the initial credentialing process.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Margaret L. McClelland  
Address: Department of Insurance  
2910 North 44th Street, 2nd Floor  
Phoenix, Arizona 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department will hold oral proceedings to receive public comments in accordance with A.R.S. § 41-1023. The times, places, and locations of the hearing are listed below:

**Monday, June 25, 2001**

10:00 a.m.  
State Office Building  
400 West Congress  
Room 158  
Tucson, AZ

**Tuesday, June 26, 2001**

9:00 a.m.  
Industrial Commission of Arizona  
800 West Washington  
Auditorium - First Floor  
Phoenix, AZ

The comment period will end and the record will close at 5:00 p.m. on June 29, 2001. The Department will accept oral or written comments that are received by 5:00 p.m. or which are postmarked by that date.

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS**

Section

<u>R20-6-1801.</u>	<u>Definitions</u>
<u>R20-6-1802.</u>	<u>Application for Certificate of Authority</u>
<u>R20-6-1803.</u>	<u>Chief Executive Officer</u>
<u>R20-6-1804.</u>	<u>Dental Director</u>
<u>R20-6-1805.</u>	<u>Changes to the Program of Compliance</u>

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<u>R20-6-1806.</u>	<u>Basic Dental Services</u>
<u>R20-6-1807.</u>	<u>System for Delivery of Services</u>
<u>R20-6-1808.</u>	<u>Geographic Areas</u>
<u>R20-6-1809.</u>	<u>Contract Requirements</u>
<u>R20-6-1810.</u>	<u>Records</u>
<u>R20-6-1811.</u>	<u>Quality Improvement</u>
<u>R20-6-1812.</u>	<u>Confidentiality of Records</u>
<u>R20-6-1813.</u>	<u>Assignment of Members</u>
<u>R20-6-1814.</u>	<u>Disclosure of Information</u>
<u>R20-6-1815.</u>	<u>Annual Report</u>
<u>R20-6-1816.</u>	<u>Application, Examination and Licensing of Producers</u>

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS**

**R20-6-1801. Definitions**

In this Chapter, the following definitions apply:

“Appointment” means a scheduled initial, non-emergent, diagnostic visit to the dentist.

“Board certified” means a dentist who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association.

“Board eligible” means a dentist who has successfully completed an approved training program in a specialty field recognized by the American Dental Association.

“Chief executive officer” means the person who has the authority and responsibility for the operation of a prepaid dental plan Organization in accordance with applicable legal requirements and policies approved by the governing authority.

“Dental hygienist” means a person who is licensed to practice dental hygiene under A.R.S. § 32-1281 et seq.

“Dentist” means a person who is licensed to practice dentistry under A.R.S. § 32-1201 et seq.

“Department” means the Arizona Department of Insurance.

“Diagnostic services” means dental services intended to identify dental abnormalities and includes radiographs and clinical exams.

“Director” means the director of the Arizona Department of Insurance.

“Emergency dental services” means dental services intended to evaluate and stabilize dental conditions of recent onset, control bleeding, and relieve pain, and includes provision of local anesthesia, and elimination of acute infection, but does not mean medications that may be prescribed by the dentist, but must be obtained through a pharmacy.

“General dentist” means a dentist whose practice is not limited to a specific area and who is not board certified.

“Governing authority” means the persons, including a board of trustees or board of directors, who have the ultimate authority and responsibility for the direction of a prepaid dental plan Organization.

“Organization” means a prepaid dental plan organization as defined in A.R.S. § 20-1001.

“Patient” means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental treatment.

“Preventive services” means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, routine prophylaxis and application of fluorides.

“Prophylaxis” means cleaning the teeth of patients with healthy tissue using mild abrasives and dental instruments to remove plaque, calculus and stains above the gum line.

“Provider” means a dentist who provides dental services to a member under a prepaid dental plan.

“Provider directory” means an Organization’s published listing of all contracted network dentists.

“Radiograph” means a picture produced on a sensitive surface by a form of radiation other than light, including x-ray photographs.

“Restorative services” means the use of metal or composite fillings and crowns.



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“Specialist” means a dentist whose practice is limited to one of the 9 specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, oral and maxillofacial radiology, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.

“Treatment plan” means a statement of the services to be performed to eliminate or alleviate the patient’s symptoms or disease, based on the dentist’s assessment of the patient’s dental history, the clinical examination, and the dentist’s diagnosis.

“Unqualified agent” means a person directly or indirectly representing or acting for an Organization who is not licensed as a producer.

**R20-6-1802. Application for Certificate of Authority**

- A.** A person who wishes to operate a prepaid dental plan in Arizona shall file an application for certificate of authority under A.R.S. § 20-1003 for review and approval by the director under A.R.S. § 20-1004. The application shall contain all the information required in A.R.S. § 20-1003 and R20-6-1802, and shall be in the form prescribed by the director.
- B.** The fidelity bond required under A.R.S. § 20-1004(A)(4) shall be issued by an insurer authorized to transact business in Arizona.
- C.** An Organization shall not commence operation of, or service under, a prepaid dental plan without approval of the director under A.R.S. § 20-1004.
- D.** The application shall not be considered filed with the director until the director receives it. The applicant shall include fees under A.R.S. § 20-167 with the application.
- E.** An applicant not domiciled in this state shall file a power of attorney as required by A.R.S. § 20-1003(A)(11) on a Department prescribed form, with the application.
- F.** Within 180 days after the director issues a certificate of authority to an Organization, the Organization shall notify the director in writing of each duly licensed dentist and member appointed to the board of directors for the Organization under A.R.S. § 20-1003(A)(4).
- G.** The Organization shall submit a written program of compliance with supporting documents that specify how the Organization will comply with the provisions of this Article. The written program of compliance shall contain the following:
  - 1.** The responsibilities and qualifications of the following positions:
    - a.** The Organization’s chief executive officer, and
    - b.** The Organization’s dental director.
  - 2.** A plan for provision of basic dental services required under R20-6-1806(A), and a copy of the schedule of benefits required under R28-6-1806(B).
  - 3.** A description of the system for delivery of services under R20-6-1807.
  - 4.** A description of the geographic area designated under R20-6-1808.
  - 5.** A plan for compliance with contract requirements under R20-6-1809 and a copy of a contract with a general dentist and a specialist.
  - 6.** A plan for compliance with records requirements under R20-6-1810.
  - 7.** The Organization’s quality improvement plan under R20-6-1811.
- H.** The application shall include the following information:
  - 1.** The proposed number of members;
  - 2.** A copy of a letter from each network dentist that documents dentist’s intent to contract with the Organization to provide services to patients under the Organization’s prepaid dental plan; and
  - 3.** For each general dentist covered in subsection (H)(2), a list of the clinical support staff by classification.

**R20-6-1803. Chief Executive Officer**

- A.** The governing authority shall appoint a chief executive officer (CEO) who has the education and experience to manage the Organization.
- B.** The CEO shall:
  - 1.** Have overall responsibility for the geographic area in Arizona that the Organization serves;
  - 2.** Maintain and be available at an office within the Organization’s geographic area in Arizona;
  - 3.** Implement the policies of the governing authority;
  - 4.** Serve as a liaison between the governing authority, providers of dental care, and providers of other services for the Organization; and
  - 5.** Designate someone with similar education, experience and knowledge of the Organization’s processes to act in the absence of the CEO.
- C.** The governing authority shall notify the Department within ten days after the effective date of a change in the appointment of the CEO.

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**R20-6-1804. Dental Director**

- A.** The governing authority, or CEO, shall appoint a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia, as dental director. If a dental director, or any other person, makes any direct denial of prior authorization of a service requested by a health care provider on the basis of medical necessity, the Organization shall comply with the requirements of A.R.S. § 20-2510(B) and (C). The dental director may also serve as the chief executive officer of the Organization.
- B.** The dental director shall oversee clinical quality and continuity of care, provider relations, facility and dental record reviews, provider credentialing and recredentialing, and participate in all other quality improvement.
- C.** The dental director shall be physically present within the Arizona geographic area during normal business hours and be involved daily in the operations and decision making of the Organization.
- D.** The governing authority shall notify the Department within ten days after the effective date of a change in the appointment of the dental director.

**R20-6-1805. Changes to the Program of Compliance**

- A.** An Organization shall submit in writing to the Department for review any proposed change to the program of compliance. The Department shall notify the Organization in writing of approval or disapproval of the change within 90 days from receipt of the proposed change.
- B.** The Organization shall provide the following information about the prepaid dental plan to the Department quarterly:
  - 1. The total number of members and the number of members assigned to each general dentist's office;
  - 2. An electronic database that lists the name, address, telephone number and whether the provider is accepting new members. The database for general dentists and specialists shall be submitted separately;
  - 3. A list of all contracted network general dentists and specialists that notes those who have been added or deleted since the previous quarterly report;
  - 4. Verification that each specialist added to the network since the last quarterly report is board eligible or board certified;
  - 5. Documentation of the Organization's quality improvement activities, including the number of providers who have been credentialed or re-credentialed since the last quarterly report, the number of facility reviews, and the number of chart reviews.
  - 6. The average wait time measured in weeks for an appointment for each network dentistry office;
  - 7. A copy of the current provider directory; and
  - 8. A complaint log with a summary of responses by complaint category.
- C.** The Organization shall submit the following information to the Department at least annually:
  - 1. Member satisfaction survey results and supporting data; and
  - 2. A recall system survey of network general dentistry offices and supporting data.

**R20-6-1806. Basic Dental Services**

- A.** An prepaid dental plan shall provide basic dental services, listed below:
  - 1. Emergency dental services on a 24-hour-per-day basis;
  - 2. Diagnostic services;
  - 3. Preventive services; and
  - 4. Restorative services.
- B.** An Organization shall publish a schedule of benefits that includes all the basic dental services and other dental services available through the Organization, with any associated charges.

**R20-6-1807. System for Delivery of Services**

- A.** Each Organization shall have a system for delivery of services that includes:
  - 1. An adequate network of general dentists. To determine network adequacy, the Department shall consider the following:
    - a. Geographic distribution of network general dentists' offices;
    - b. The number of dental offices accepting new members;
    - c. The percentage of all network members who are able to schedule an appointment within 9 weeks;
    - d. The availability of trained clinical support staff in the market place;
    - e. The ratio of population growth to the increase or decrease in the number of dentists in the market place;
    - f. Current availability for appointments in all general dentist practices in Arizona;
  - 2. Provisions for using specialists for dental services that cannot be provided by the Organization's network of contracted specialists; and
  - 3. A referral process to assure continuity of care to members who need specialty services.
- B.** If a network dental office that is open to new members has wait times for appointments of more than 9 weeks, for 3 consecutive calendar quarters, the director may require that the Organization close the office to new members until the wait time is below 9 weeks.

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- C.** The Organization shall ensure that at least 15% of its network offices that are open to new members have wait times that are not longer than 9 weeks after an appointment. If more than 15% of the network offices that are open to new members have wait times longer than 9 weeks, the Organization shall submit a plan to the Department under which the Organization will, within 90 days, reduce the wait times to less than 9 weeks. If the Organization does not reduce the wait times to less than 90 days, within the 90 day period, the Organization shall refer the members who are waiting for an appointment to a network general dentist, or a non-network general dentist, who can schedule the member for an appointment in less than 9 weeks. The member may choose to continue dental care under the prepaid dental plan with the referred dentist for the remainder of the member's enrollment period. The Organization shall provide the services to the referred member at a cost that is no greater than if the services were obtained from the member's assigned network dentist.
- D.** The Organization shall pay for emergency dental services provided to a member by a dentist licensed in the jurisdiction where the services are provided, subject to plan limitations disclosed in the dental care plan, regardless of the location of the facility where services are provided. This shall include an emergency that occurs within the area served by the member's designated provider, but the provider is unavailable, or when the emergency occurs outside of the member's designated service area.

**R20-6-1808.      Geographic Areas**

- A.** An Organization shall designate the geographic areas in Arizona in which the Organization intends to provide services that are reasonably convenient to the prospective members. The Organization shall provide a description of the geographic areas and locations of all facilities in which dental care will be provided under the prepaid dental plan. This information shall accompany or be included in any advertisements or sales materials provided to prospective employer groups and prospective members.
- B.** Each Organization shall define its geographic areas by citing at least one of the following:
1. Local government jurisdictions, such as cities or counties;
  2. Street boundaries; or
  3. Area within a specified radius of an intersection.

**R20-6-1809.      Contract Requirements**

- A.** The Organization shall have a written contract with each provider that documents the requirements for providing services under the prepaid dental plan and the agreements between the parties. The Organization shall ensure that the provider complies with all contract requirements.
- B.** In addition to the requirements in subsection (A), the contract shall also include the following:
1. The Organization shall have the authority to review the provider's records;
  2. The provider shall implement and maintain a process to inform members enrolled with that provider of the need to schedule periodic preventive dental services based on the member's oral health status; and
  3. Upon termination of the contract by either party or upon expiration of the contract, the provider shall complete any procedure undertaken upon a member.

**R20-6-1810.      Records**

- A.** The Organization shall require that the dental provider to whom a member is assigned maintain, at the provider's office, dental records on each member. The dental record shall contain the full name of the dentist responsible for the treatment and documentation of care provided including the following:
1. A record of the symptoms presented and dates;
  2. Radiographs of diagnostic quality and quantity;
  3. Diagnosis consistent with the patient's medical and dental history and the clinical findings;
  4. Treatment plans;
  5. All treatment notes and dental charting; and
  6. Other information relating to patient care.
- B.** Dental records are the property of the provider and shall not be removed from the provider's premises, except:
1. With the patient's permission, including for routing records to dental or medical practitioners for consultation or evaluation; or
  2. When subpoenaed by a court.
- C.** The Organization shall maintain, at its principal office, a copy of each issued or delivered advertising matter or sales material, letter of solicitation, evidence of coverage, provider directory, certificate, agreement or contract. The Organization shall note the date each advertising matter and sales material was filed with the Department and the date of distribution to any person. Such advertising matter and sales material shall be maintained for at least 3 years.

**R20-6-1811.      Quality Improvement**

- A.** Each Organization shall have a governing authority.
- B.** The governing authority shall appoint a quality improvement committee, that shall meet at least quarterly, and consist of the chief executive officer or designee, the dental director, the person who manages the Organization's quality improve-

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ment process, and at least one dental health professional. The committee may include network allied health professionals and members of the plan.

- C.** The quality improvement committee shall review and evaluate dental services delivered by the Organization and establish procedures for recordkeeping and distribution of committee reports.
- D.** The Organization shall provide the director with a copy of the minutes of each quality improvement committee meeting within 30 days of the quality improvement committee meeting.
- E.** Each Organization shall maintain a written quality improvement plan that contains procedures for, at least, each of the following:
  - 1. Ensuring that a dentist licensed in any state or territory of the United States or District of Columbia reviews and evaluates dental care and services provided by each contracted general dentist at least once every 2 years.
  - 2. Monitoring of care provided to members by a licensed dentist to evaluate:
    - a. Timely initiation of treatment;
    - b. Timely completion of treatment;
    - c. The recall system;
    - d. Appropriateness of documentation of findings;
    - e. Appropriateness of diagnosis;
    - f. Appropriateness of treatment based on the diagnosis;
    - g. Appropriateness of the sequence of treatment; and
    - h. Appropriateness of referrals to specialists and other general dentists.
  - 3. Allocation of resources to analysis of problems and deficiencies identified;
  - 4. Implementing corrective action plans and methods for monitoring improvements;
  - 5. Notifying members in writing of the member's responsibility to cooperate with those providing dental care services and of the member's rights to:
    - a. Voice concerns about the Organization or care provided;
    - b. Be provided with information about the Organization, its services, providers, and members rights and responsibilities;
    - c. Participate in decisions about the member's dental care; and
    - d. Be treated with respect and have the right to privacy recognized.
  - 6. Monitoring and improving membership satisfaction;
  - 7. Maintaining accurate provider directories that meet at least the following requirements:
    - a. The provider directory lists only credentialed providers who are currently scheduling members for diagnosis and treatment; and
    - b. There is a clear designation in the directory of providers who are not accepting new members.
  - 8. Review by the dental director of the following for initial credentialing of network providers:
    - a. Query to the National Practitioner Data Bank;
    - b. Query to the Arizona Board of Dental Examiners;
    - c. Valid United States Drug Enforcement Administration certificate;
    - d. Evidence of current malpractice insurance; and
    - e. Documentation that each specialist is board eligible or board certified.
  - 9. Continuous recredentialing that updates information obtained in subsection (E)(8)(b) through (e) for review by the dental director.

**R18-6-1812. Confidentiality of Records**

Information obtained by an Organization pertaining to the diagnosis, treatment, or health of a member and any contract with providers submitted under this Article is confidential and shall not be disclosed to any person except:

- 1. To the extent necessary to carry out this Article;
- 2. Upon the express written consent of the member, applicant, provider, or Organization, as appropriate; or
- 3. Under statute or court order for the production or discovery of evidence or as part of a criminal investigation.

**R20-6-1813. Assignment of Members**

- A.** The Organization shall ensure that a member is assigned to the provider the member has chosen within 30 days of enrollment. The Organization shall choose and assign a provider to a member within 30 days of any of the following:
  - 1. Receipt of a member enrollment form that does not designate a provider, or receipt of a member enrollment form that designates a provider who is unavailable;
  - 2. The date of the notice that the member's assigned provider intends to cease providing services; or
  - 3. The date the member's assigned provider becomes unavailable, for any reason.
- B.** When the Organization chooses and assigns the provider for a member, the Organization shall assign the member to a provider accepting new members that is closest to the member's home. The member shall have the option of selecting a network provider other than the provider assigned by the Organization.

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**C.** The Organization shall maintain a continuous assignment process in compliance with subsections (A) & (B) of this Section that allows no more than 4% of members to be unassigned at any time.

**R20-6-1814.**     **Disclosure of Information**

The director may require that the prepaid dental plan submit, under A.R.S. § 20-1003(A)(14), information that discloses biographical, employment and business financial history, criminal activity, fingerprints, or any information that relates to the ability to operate a prepaid dental plan for principals, principal officers, controlling persons, and agents of the applicant if necessary for the protection of residents of this state.

**R20-6-1815.**     **Annual Report**

Each Organization shall file an annual statement as prescribed in A.R.S. § 20-1000 with the director by March 1 of each year. The statement shall be completed in accordance with the accounting practices and procedures and in the general form and context approved by the National Association of Insurance Commissioners for the kind of insurance to be reported upon, and as supplemented for additional information required by the director under A.R.S. § 20-223.

**R20-6-1816.**     **Application, Examination and Licensing of Producers**

A producer who transacts business or solicits on behalf of an Organization is subject to the requirements of A.R.S. Title 20, Chapter 2, Article 3 governing producers.